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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of JUSTIN and SHARON WHITE.	B251847 (Los Angeles County Super. Ct. No. SD026914)
JUSTIN C. WHITE, Respondent, v. SHARON A. EICHENLAUB, Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Matthew St. George, Commissioner. Affirmed in part and reversed in part.

Law Offices of Alan M. Klein, Alan M. Klein; Law Offices of Bruce Adelstein and Bruce Adelstein for Appellant.

Law Offices of Marjorie G. Fuller, Marjorie G. Fuller; Brandmeyer, Gilligan & Dockstader and John T. Bachmayer for Respondent.

Sharon A. Eichenlaub (Eichenlaub) appeals postjudgment orders in this marital dissolution action, arguing the trial court misinterpreted support provisions in the underlying judgment, resulting in an incorrect calculation of support arrearages, and incorrectly calculated prospective child support. We disagree with Eichenlaub that the trial court misinterpreted the support provisions; however, the trial court failed to include all of the income that should have been considered in the calculation of arrearages. Accordingly, we affirm the trial court's calculation of the support arrearages based on the commission income already considered, but remand the matter for the trial court to make an additional award of arrearages based on the additional income identified below. We also reverse the trial court's calculation of prospective child support because the court did not use the correct time share percentages. We remand the case for determination of prospective child support based on the correct time share.

BACKGROUND

Eichenlaub and Justin C. White (White) were married in 2002 and have three minor children. When they separated in 2009, White filed a marital dissolution petition in the Los Angeles Superior Court. On September 22, 2009, the parties entered into a stipulated judgment (Judgment) that settled all issues concerning marital rights, including child custody and support, spousal support, and division of property.

Eichenlaub's attorney at the time of the settlement, Alan Klein, prepared the terms of the Judgment relating to child and spousal support. He calculated those amounts using the DissoMaster program.[1] Mr. Klein used White's gross monthly wages of $14,583 per month ($174,996 per year, as disclosed in White's then current income and expense declaration) as "the base income upon which the base child and spousal support were determined (i.e. $5,965/mo.) in the Judgment." The Judgment provided that starting

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[1] "DissoMaster is a computer software program widely used by courts to set child support and temporary spousal support." (*Namikas v. Miller* (2014) 225 Cal.App.4th 1574, 1578, fn. 4.) The goal is to calculate support that comports with the uniform child support guideline, Family Code sections 4050–4076, or guideline support.

July 1, 2009, White would pay Eichenlaub $3,736 per month in child support and $2,229 per month in spousal support, for a total of $5,965 per month. The Judgment provided for joint legal custody of the parties' children and set forth schedules for physical custody, visitation, and child and spousal support. The spousal support obligation would end on April 30, 2012. The Judgment stated it constituted the full and complete settlement of rights relating to child custody, child visitation, child support, spousal support and maintenance, and granted the court jurisdiction over all executory provisions.

At the time of the Judgment, White "was a W-2 employee who had a history of receiving annual bonuses in varying amounts." In order to deal with the varying income, Mr. Klein also included an *Smith-Ostler* formula in the Judgment "applicable to any bonus and commissions above the base." Specifically, the Judgment provides for a total of 34.5 percent of any bonus or commission, comprised of 12 percent for child support and 22.5 percent for spousal support, to be paid as an additional payment. Mr. Klein derived these percentages based upon the same DissoMaster program report noted above, which includes a "Bonus Table For Father." The parties agree that the "Bonus Table for Father (i.e. *Smith-Ostler*) percentages set forth in the Judgment . . . for calculation of additional child support and spousal support over and above the support on [White]'s 'base' income, were based on [White]'s base gross wages of $14,583 per month."

Though White initially earned a set monthly salary in a managerial position in a commercial real estate firm, in March 2010 he switched to a sales position with the same firm, one that paid no base salary but only commissions. He continued in that position for 16 months, through June 2011, when he reverted to a salaried managerial position, earning no further commissions.

From July 1, 2009 to April 30, 2012, when the spousal support obligation terminated, White paid Eichenlaub $6,000 per month in child and spousal support, $35 more per month than the base amount of $5,965 per month. White did not pay support beyond this amount, such as an *Smith-Ostler* percentage of bonuses or commissions he earned from March 2010 to June 2011.

During the 16-month period from March 2010 through June 2011, White was also given a $5,000 per month "loan" by his employer, that was to be forgiven if White met certain performance goals based on revenue production and stayed a required period in his job position. White admits he met those conditions and that the loan amounts were forgiven.

In August 2012, White filed a motion to modify the judgment, seeking a change in the child support orders and a 50/50 time share with the children. Eichenlaub responded by requesting a determination of support arrearages, claiming White had violated the Judgment by failing to pay 34.5 percent of his earlier commission income.

A. Spousal and Child Support Arrearages

At trial, Eichenlaub argued that pursuant to the Judgment, White owed her "additional support" in the amount of 34.5 percent of every dollar of commissions he earned during the 16 months between March 2010 and June 2011. Eichenlaub claimed this money was owed over and above the $96,000 ($6,000 per month for 16 months) that White had paid during that time.[2]

White initially argued the monthly $5,965 support need be paid only when he earned a salary. When he earned solely commissions, he had no obligation to pay the $5,965 support and only needed to pay the "additional support" amount of 34.5 percent of the commissions. Accordingly, the $96,000 he had actually paid between March 2010 and June 2011, when he earned only commissions, should be credited toward the 34.5 percent of commissions owed.

White alternatively argued that he was to pay the monthly $5,965 amount on his income earned up to $174,996 per year ($14,583 per month), on which those amounts were calculated when the Judgment was prepared. White referred to this as his "base

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[2] The parties for the most part ignore the additional "undesignated" $35 White paid every month (that bumped the monthly support from $5,965 to $6,000) for the 34 months between July 2009 and April 2012, but Eichenlaub acknowledges that White should receive credit for it.

salary." White argued the *Smith-Ostler* percentages for additional support only applied to income earned above the "base salary" (i.e., income greater than $174,996 per year).

The trial court agreed with White's alternative argument. Finding the terms of the Judgment to be ambiguous, the trial court found that it was the intent of the parties at the time of the Judgment for White: (1) to pay the base support amount of $5,965 a month (reflecting a base salary of $174,996 per year) and (2) to the extent that White made income over $174,996 per year ("the total amount of money [White] was making, however you want to label it"), to pay an additional support of "an agreed upon percentage of the additional income" above $174,996 per year. The trial court explained that this interpretation is "consistent with the Judgment" and reflects "what was on the parties' minds at the time." In particular, the court found the phrases "as additional child support" and "as additional spousal support" to be ambiguous for *Smith-Ostler* purposes in the absence of a reference to an underlying base salary. The trial court stated, "[B]ecause the judgment doesn't state or get into what is his actual salary at that time or use a base amount for *Smith-Ostler* purposes, . . . the court has to read between the lines about whether or not it's additional that was set forth in the matter—the word 'additional' is ambiguous."

Having found that the monthly support of $5,965 was tied to White's income of $174,996, and the additional support of 34.5 percent of commissions applied only to amounts above $174,996, the court calculated arrearages as follows. The court found that, during the 16-month period from March 1, 2010 through June 30, 2011, White earned $390,506. The court further found that the pro-rated amount of $174,996 per year for the 16-month period is $233,333, i.e., the threshold amount of income to trigger additional support.[3] The court subtracted $233,333 from $390,506 to determine the amount of income on which additional support was to be paid. This resulted in $157,173

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[3] The $233,333 is calculated using $14,583 per month (as used in the original DissoMaster support calculation) multiplied by 16 months.

of money subject to the *Smith-Ostler* percentage. Taking 34.5 percent of $157,173, the court found that the additional child support and spousal support owing was $54,244. Thus, the court ordered White to pay $54,244 in spousal and child support arrearages, plus interest.

B. Prospective Child Support

The trial court also addressed the issue of prospective child support raised by the parties' agreement that their time share percentages would change. Before trial, the parties stipulated that during the school year, Eichenlaub would have the children on Monday and Tuesday, White would have them on Wednesday, they would alternate custody on Friday, Saturday and Sunday, and on alternating Thursdays one would have one of the children and the other two. Over any two-week span, this meant Eichenlaub had the children on two Mondays, two Tuesdays, no Wednesdays, one Friday, one Saturday, one Sunday, and effectively one Thursday, for a total of eight days out of 14, or 57.14 percent of the time. (Eight divided by 14 days times 100 percent equals 57.14 percent.) White had the children the other six days out of 14, or 42.86 percent of the time.

The trial court, however, found White had custody 50 percent of the time and calculated guideline support to be $1,901 per month. Although Eichenlaub's counsel objected to the court's use of 50 percent rather than White's correct time share of 42.86 percent, the court overruled the objection on the ground that it was permitted to make estimates of time shares. Eichenlaub's counsel also objected that any support calculation would be premature because the court had not yet determined the children's summer vacation custody schedule. The court overruled that objection as well.

The court then ordered that each parent have custody of the children on alternating weeks for the 10 weeks of summer vacation. The court obtained a guideline child support amount of $1,826 for White. When Eichenlaub's counsel objected that White's time share was only approximately 44 percent, calculated as a weighted average of 42.86 percent over the 42-week school year and 50 percent over the 10-week summer vacation,

the court split the difference between the $1,901 per month it had originally calculated and the latest calculation of $1,826 per month, for a total of $1,863.50 per month, which corresponded to a 49.5 time share percentage. It ordered White to pay this amount.

Eichenlaub timely appealed.

DISCUSSION

White preliminarily argues Eichenlaub's appeal must fail because she designated an inadequate record. We discern no material inadequacy.

A. Interpretation of the Stipulated Judgment and the Calculation of Arrearages

The first issue concerns the meaning of the Judgment and how its child and spousal support provisions apply to the 16-month period from March 2010 through June 2011, and how to calculate arrearages. During this period, White did not receive a base salary reported on a form W-2, but rather he received commissions and the $5,000 per month forgivable loan.

Courts have broad authority to enforce support orders. (Fam. Code,[4] § 290.) "If a parent has been ordered to make payments for the support of a minor child, an action to recover an arrearage in those payments may be [brought] at any time." (§ 4503.) "'Arrearage' . . . is the amount necessary to satisfy a support judgment or order pursuant to Section 695.210 of the Code of Civil Procedure." (§ 5201.) "'Accrued arrearages are treated like a money judgment.'" (*In re Marriage of Perez* (1995) 35 Cal.App.4th 77, 80.)

Because accrued support arrearages are treated like a money judgment, a court may not reduce them, as to do so would cut off one spouse's ability to enforce arrears accruing under prior valid orders and improperly forgive a portion of the other spouse's outstanding debt. (*In re Marriage of Perez, supra,* 35 Cal.App.4th at p. 80.) Accordingly, a support order may only be interpreted, not retroactively modified to

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[4] All further statutory references are to the Family Code unless otherwise indicated.

change an amount that accrued before the date a motion to modify the order was filed. (*Ibid*.; § 3651, subd. (c)(1).)

A marital settlement agreement incorporated into a judgment of dissolution is construed under the rules governing the interpretation of contracts generally. (*In re Marriage of Hibbard* (2013) 212 Cal.App.4th 1007, 1012.) "'The basic goal of interpretation is to give effect to the parties mutual intent at the time of contracting.'" (*In re Marriage of Simundza* (2004) 121 Cal.App.4th 1513, 1518.) "'When a contract is reduced to writing, the parties' intention is determined from the writing alone, if possible,'" construing the words in their ordinary and popular sense. (*Ibid*.) """If [the] language is clear and explicit, it governs."""" (*In re Marriage of Hibbard*, at p. 1013.) However, if the terms are ambiguous or uncertain, they must be interpreted in the sense in which the parties understood them. (*Ibid*.) If a term is susceptible to more than one reasonable interpretation, a court may admit extrinsic evidence, but only if "it supports a meaning to which the language is reasonably susceptible." (*In re Marriage of Iberti* (1997) 55 Cal.App.4th 1434, 1439.)

A writing may be "latently ambiguous if it appears clear on its face, but parol evidence shows it is reasonably susceptible to two or more interpretations." (*Bill Signs Trucking, LLC v. Signs Family Ltd. Partnership* (2007) 157 Cal.App.4th 1515, 1521.) A court may """provisionally receive[] . . . all credible evidence concerning the parties' intentions to determine 'ambiguity,' i.e., whether the language is 'reasonably susceptible' to the interpretation urged by a party. If in light of the extrinsic evidence the court decides the language is 'reasonably susceptible' to the interpretation urged, the extrinsic evidence is then admitted to aid in . . . interpreting the contract."""" (*Ibid*.) Further, "[a] contract may be explained by reference to the circumstances under which it was made and the matter to which it relates. (Civ. Code, § 1647.) Where parol evidence explains and does not vary the written contract, it may be admitted." (*Shimmon v. Moore* (1951) 104 Cal.App.2d 554, 559.)

The interpretation of a stipulated judgment is a question of law subject to de novo

review. (*In re Marriage of Smith* (2007) 148 Cal.App.4th 1115, 1120; *In re Marriage of Davis* (2004) 120 Cal.App.4th 1007, 1017–1018.) On appeal, "[t]he trial court's threshold finding of ambiguity is a question of law subject to our independent review. The court's ultimate construction of ambiguous language is subject to our independent review if the extrinsic evidence is not in conflict." (*Bill Signs Trucking, LLC v. Signs Family Ltd. Partnership*, *supra*, 157 Cal.App.4th at p. 1521.)

Here, the trial court correctly found the Judgment contains ambiguous terms and reasonably interpreted those terms consistent with the parties' intent. The trial court found that though the Judgment does not expressly say that support payments are calculated from a set base salary and additional salary above that base, the parties intended the set monthly and additional support payments to reflect that distinction. The trial court found that the intent of the parties was to look at the total amount of money White was making—however labeled and not to make distinctions between income from salary and income from bonus or commissions—and to make set monthly and additional support payments based on that total amount.

First, the extrinsic evidence introduced at trial exposed latent ambiguities in the Judgment regarding the meaning of White's obligations to pay "additional child support" and "additional spousal support." The uncontroverted evidence is that these additional support obligations were intended to require White to make *Smith-Ostler* payments consistent with the "Annual Bonus Table for Father" generated by counsel in the DissoMaster report. Indeed, the terms "additional child support" and "additional spousal support" found in the Judgment appear on the annual bonus table, with the explanation that the calculated *Smith-Ostler* percentages are "the percentage of the total wage bonus paid as additional child support" and "the percentage of the total wage bonus paid as additional spousal support." Thus, the meaning of additional child and spousal support depends on the meaning of the phrase "total wage bonus" and how the parties intended the annual bonus table to apply.

Eichenlaub argues on appeal that the term "wage bonus" refers to "any wages that

are not fixed, not predictable, or not certain to be earned."[5] But this argument ignores, and is contrary to, the undisputed evidence introduced at trial. The parties stipulated at trial that the bonus table was "based on [White's] gross wages of $14,583 per month." They also stipulated that these gross monthly wages represented a "base income" and that the *Smith-Ostler* percentages for any "additional" child and spousal support were to be applied to "any bonus and commissions above the base." In other words, the term "wage bonus" as used by the parties referred to White's income in excess of his income of $14,583 per month (or $174,996 per year). It follows that the parties intended that White's obligation to pay "additional child support" and "additional spousal support" applies only to his income in excess of $174,996 per year. Given the circumstances under which the Judgment was made, including White's then existing income, the parties' agreement that he had a base income upon which base support would be calculated, and the parties' understanding that the *Smith-Ostler* percentages were to be applied to bonus and commissions above the base income, the terms "additional child support" and "additional spousal support" were correctly interpreted by the trial court.

Further, while at trial the parties and the trial court focused on the phrases "additional child support" and "additional spousal support," the extrinsic evidence also reveals that the terms "bonus and commissions" as used in the Judgment are latently ambiguous.[6] While the Judgment uses the language "bonus and commissions," the trial evidence clearly establishes that Eichenlaub's counsel drafted, and the parties intended,

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[5] Eichenlaub purports to derive this definition from the use of similar terms in three completely inapposite cases.

[6] Following argument on appeal, we requested supplemental letter briefs from the parties to address various issues, including the Judgment's use of the terms "bonus and commissions" in light of the DissoMaster report and its use of the term "wage bonus." We agree with White's observation that Eichenlaub's proposed interpretation of the Judgment is inconsistent with the agreement's definition of "bonus." The evidence here establishes bonus has to refer to an additional payment that takes into account the base salary amount.

that language to reflect the meaning of "wage bonus" used in the DissoMaster calculation. As noted, the parties intended that wage bonus here refers only to the amount of income above $174,996 per year. Again, the trial court found that the intent of the parties was not to make distinctions between income from salary and income from bonus or commissions, but to look at "the total amount of money [White] was making, however you want to label it."

Accordingly, the trial court correctly calculated support arrearages by applying the *Smith-Ostler* percentages only to income that White earned above his base salary of $14,583 per month (or $174,996 per year).

In calculating the arrears, the trial court, without explanation, did not include the $5,000 per month that White received during the 16-month period from March 2010 through June 2011 as loans that were forgiven when he met his performance goals. Rather, the trial court applied the *Smith-Ostler* percentages only to the commissions White received. Given this court's clarification of meaning of "bonus and commissions," the $5,000 per month from meeting performance goals qualifies as bonus income that should have been included, along with the $390,506 in commissions already accounted for in the *Smith-Ostler* calculations. Accordingly, we remand the case to the trial court for a determination of additional arrears, plus interest, owing to Eichenlaub from the $5,000 monthly amounts.

B. Prospective Child Support

The next issue is whether the child support guideline requires that the trial court apply an accurate time share percentage for the high earning parent.

Strong public policy, as expressed in statutes setting forth the uniform child support guideline, favors adequate child support. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 283.) The child support guideline "seeks to place the interests of children as the state's top priority." (§ 4053, subd. (e).) In determining child support under the guideline, courts must adhere to certain principles, such as "[a] parent's first and principal obligation is to support his or her minor children according to the parent's

circumstances and station of life." (§ 4053, subd. (a).) "The guideline takes into account each parent's actual income and level of responsibility for the children." (§ 4053, subd. (c).) "Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children." (§ 4053, subd. (f).) "To implement these policies, courts are required to calculate child support in accordance with the mathematical formula set forth in the [guideline]." (*In re Marriage of Cheriton*, at p. 284.) A "trial court may not depart from [the guideline] except in . . . special circumstances." (*Ibid.*; see §§ 4052, 4053, subd. (k).)

The formula for determining child support is "CS = K[HN – (H %)(TN)]," where CS is the child support amount, K is the amount of both parents' income to be allocated for child support, HN is the high earner's net monthly disposable income, H percent is the approximate percentage of time during which the high earning parent will have primary physical responsibility for the child, and TN is the total net monthly disposable income of both parents. (§ 4055, subds. (a) & (b); *DaSilva v. DaSilva* (2004) 119 Cal.App.4th 1030, 1032.)

The amount of child support determined by the formula is presumed to be correct. (§ 4057, subd. (a).) However, the court "is not just supposed to punch numbers into a computer and award the parties the computer's result without considering circumstances in a particular case which would make that order unjust or inequitable." (*In re Marriage of Fini* (1994) 26 Cal.App.4th 1033, 1043.) "[T]he court must have the ability to exercise discretion to achieve fairness and equity." (*Ibid.*) Accordingly, the court may depart from the formula so long as it first determines the guideline amount then specifies why the ordered amount differs, and explains how the ordered amount is consistent with the best interests of the child. (§§ 4055, 4056; *In re Marriage of Whealon* (1997) 53 Cal.App.4th 132, 144 (*Whealon*).)

An award or modification of child support rests in the trial court's sound discretion and will not be overturned absent a showing of a clear abuse of discretion resulting in

prejudicial error. (*In re Marriage of Calcaterra & Badakhsh* (2005) 132 Cal.App.4th 28, 34.) We will interfere "'only if no judge could reasonably have made the order under the circumstances.'" (*In re Marriage of Hubner* (2001) 94 Cal.App.4th 175, 184.)

A trial court is permitted to estimate time share percentages where appropriate. The H percent factor will sometimes be imprecise, as it is defined as the "approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent. In cases in which parents have different time-sharing arrangements for different children, H% equals the average of the approximate percentages of time the high earner parent spends with each child." (§ 4055, subd. (b)(1)(D).) But the court may not estimate time share percentages where, as here, the correct time share is easily determined.

In *Whealon*, *supra*, 53 Cal.App.4th 132, the trial court ran the child support computation using a "20 percent time-share factor when the correct figure was 28 percent." (*Id.* at p. 144.) The father brought the error to the trial court's attention, but the court chose not to rerun the calculation, opting instead to estimate the child support figure. (*Ibid.*) The appellate court held this was an abuse of discretion. (*Ibid.*) "[D]eviations cannot be justified simply by making an estimate. . . . If the trial court is going to use its discretion to vary the guideline amount, it must make an accurate computation of that amount, then actually use its discretion and state reasons for the variance on the record, not just 'estimate' the guideline amount in a context where it evidently does *not* intend to vary the guideline." (*Id.* at pp. 144–145.)

Here, the trial court never determined the correct guideline amount or explained how a different amount would be consistent with the best interests of the children. White's time share with the children was 44.23 percent, calculated as the weighted average of 50 percent of 10 summer vacation weeks plus 42.86 percent of 42 school weeks. The trial court gave no reason for departing from this number. This was an abuse of discretion. Therefore, the DissoMaster calculation must be redone.

DISPOSITION

The order is affirmed regarding the court's calculation of arrearages based on the $390,506 of income from commissions; the trial court is directed to determine additional arrearages plus interest owing from Justin White to Sharon Eichenlaub based on the $5,000 per month White received as a forgiven loan for the 16-month period of March 1, 2010 through June 30, 2011. The trial court's order is reversed regarding the calculation of prospective child support and remanded for a calculation of the child support amount based on the correct time share percentages. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

I concur:

ROTHSCHILD, P. J.

CHANEY, J., concurring and dissenting.

I join in Part B of the Discussion portion of the majority opinion and concur with the portion of Part A that requires remand for a determination of additional arrears owing to Eichenlaub due to the $5,000 loans White received that were forgiven. I dissent from the remainder of Part A because it finds no support in the record.

A. The Stipulated Judgment

The stipulated judgment provided that White, who earned a salary of $14,583 per month, would pay Eichenlaub $3,736 per month in child support and $2,229 per month in spousal support, for a total of $5,965 per month. The judgment then continued as follows:

"As *additional child support*, Petitioner is ordered to pay to Respondent within ten (10) days of his receipt of *any* bonus or commissions paid to him by his employer, Twelve Percent (12%) of the gross amount of said bonus or commissions."

and

"As *additional spousal support*, Petitioner is ordered to pay to Respondent within ten (10) days of his receipt of *any* bonus or commissions paid to him by his employer, Twenty Two and a half Percent (22.5%) of the gross amount of said bonus or commissions."

It was stipulated at trial that Eichenlaub's attorney drafted the stipulated judgment and that the percentages were "based on" a DissoMaster calculation that produced both a base award and an *Smith-Ostler* formula.[1] The judgment thus comprised two components: (1) A DissoMaster percentage, amounting to approximately 41 percent of

[1] *In re Marriage of Ostler and Smith* (1990) 223 Cal.App.3d 33, 54, which approved a trial court's order augmenting child support in an amount equal to a percentage of the father's future bonuses.

White's base pay; and (2) two *Smith-Ostler* enhancement percentages (12 and 22.5 percent) of any commissions White may earn over and above his base pay.

From September 2009 to February 2010, when White earned only a salary, he paid only the DissoMaster percentage. In March 2010, White left his salaried position and for 16 months was paid only bonuses and commissions. During that time, his income increased by approximately 60 percent, to $24,407 per month. But instead of (1) continuing to pay the DissoMaster percentage of 41 percent on what was now his base income, or (2) paying the DissoMaster percentage on the first $14,583 per month and the *Smith-Ostler* percentage of 34.5 percent on any income over that amount, or (3) seeking a modified judgment (Fam. Code, § 3651; *Ostler & Smith*, *supra*, 223 Cal.App.3d at pp. 41-42), White unilaterally determined that he owed only the original $5,965 per month (although he paid $6,000), which now amounted to approximately 24 percent of his income. Going strictly by percentages, had White moved for modification, his support obligation likely would have gone from $5,965 per month to approximately $10,000 per month.

B. The Stipulated Judgment is Unambiguous

The stipulated judgment thus sets forth a base amount of support in the amount of $5,965 per month, then sets forth a contingent percentage of "any bonus or commissions" "as additional" child and spousal support. These provisions are unambiguous: "Additional" means "more than," and "any" means any. "Additional" support means an amount in addition to a previously stated amount of support. (See Fam. Code, § 4062, subd. (a) and (b) [allocating additional expenses "as additional child support"]; *In re Marriage of Ostler & Smith*, *supra*, 223 Cal.App.3d at p. 36, 42, 46 ["additional support" is calculated as "a percentage of . . . future bonuses over and above the fixed monthly" amount of support].) The previously stated amount of support here was $5965 per month, the DissoMaster percentage. Further, the additional support was 34.5 percent of "any bonus or commissions." "Any bonus or commissions" means any bonus or commissions, not "only those bonuses and commissions over $14,583 per month."

C. The DissoMaster Report Reveals no Latent Ambiguity

White argues the phrases "additional child support" and "additional spousal support" are latently ambiguous because they have specialized meanings that are set forth in an "Annual Bonus Table for Father" (bonus table), which was produced by the DissoMaster program, and those meanings are different from their plain meaning.[2] The argument is without merit for several reasons, the most obvious of which is that neither White nor Eichenlaub ever saw the bonus table and could therefore not have adopted its specialized definitions when agreeing to the stipulated judgment.

The parties stipulated at trial that Eichenlaub's attorney based the stipulated judgment on calculations run by the DissoMaster program, which produced a DissoMaster report to which the bonus table was appended.

1. The Bonus Table

The bonus table spans 25 pages and contains 1,001 rows, corresponding to hypothetical "Bonus Wages" for White, from $0 to $100,000 per month, set forth in $100 increments. "Bonus Wages" is not defined, but an examination of the table reveals it means any amount over the base wage used to start the DissoMaster calculations—$14,583 per month.

Each row in the table contains two columns setting forth "the percentage of the total wage bonus paid *as additional spousal support*" and "*additional child support*." (Italics added.) The entries in these two columns are zero percent for a $0 wage bonus, i.e., zero additional support when the only income is $14,583 per month. For wage bonuses ranging from $100 to $100,000 per month, the support percentages fluctuate. For example, the child and spousal support percentages are 13 and 22 percent, respectively, for a wage bonus of $100 per month, and 12.56 and 20.16 percent, respectively, for a wage bonus of $100,000 per month. No child support enhancement is

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[2] White did not make this argument at trial, and did not make it on appeal until we requested additional briefing almost one year after his respondent's brief was filed.

exactly 12 percent of any wage bonus and no spousal support bonus is exactly 22.5 percent. From all of this it may be inferred that the "additional child" and "additional spousal" support described in the table are to be assessed only when a bonus is paid over and above the pre-entered base wage of $14,583 per month.[3]

White argues this specialized meaning must carry over to the stipulated judgment. He is incorrect.

2. The Parties Did Not Adopt Bonus Table Definitions

First, a marital settlement agreement incorporated into a judgment of dissolution is construed under the rules governing the interpretation of contracts. (Maj. opn., p. 8.) The goal is to give effect to the mutual intention of the parties at the time of the stipulated judgment. (*Ibid*.) If the language is ambiguous or uncertain, the terms of the settlement agreement "must be interpreted in the *sense in which the parties understood them*." (*Id*. at p. 9, italics added.)

The record here contains no evidence that when Sharon Eichenlaub and Justin White settled the terms of the dissolution of their marriage they knew anything about the DissoMaster program, the DissoMaster report that Eichenlaub's attorney had generated, the bonus table appended to it, or the definitions of "additional child support" and "additional spousal support" set forth in the table. Therefore, although those terms may possibly be ambiguous to a family law lawyer or judge, there is no basis in the record to conclude the terms were ambiguous to the parties.

Not only is the record silent as to the parties' agreement on White's belatedly offered interpretation, his actions after judgment belied any such interpretation. According to his purported understanding of the terms he would have owed an additional $3000 per month, approximately, when his salary ceased but bonuses and commissions

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[3] DissoMaster produced a second table that prescribes different child and spousal support percentages, including an entry prescribing 12 and 22.5 percent, respectively,

kicked in and his income increased by 60 percent, yet he made no such change in his payments. Further, White's attorney admitted in his respondent's brief that "it appeared no one here contemplated how the stipulation would apply in the future if [he] did not have a fixed income." And in a letter brief filed a year later, the attorney stated, "Respondent cannot adequately explain the language of the judgment because he is not a lawyer . . . . He assumed Appellant's counsel would draft the document to reflect the parties' intent."

This is obviously correct: The parties did not anticipate that White would move from a salaried position to one that paid only commissions. That does not mean the phrases "additional child support" and "additional spousal support" are ambiguous, only that the parties failed to anticipate their effect when circumstances changed. But it is too late now to seek reduction of arrears that accrued under a valid judgment, as the trial court had no jurisdiction in effect to reform the stipulated judgment based on the parties' mutual mistake. (Fam. Code, § 3651, subd. (c) ["a support order may not be modified or terminated as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate"].) "Because accrued support arrearages are treated like a money judgment, a court may not reduce them, as to do so would cut off one spouse's ability to enforce arrears accruing under prior valid orders and improperly forgive a portion of the other spouse's outstanding debt. (*In re Marriage of Perez* (1995) 35 Cal.App.4th 77, 80.) Accordingly, a support order may only be interpreted, not retroactively modified to change an amount that accrued before the date a motion to modify the order was filed.

When unanticipated circumstances arise, the remedy is to seek a modified judgment. (Fam. Code, § 3651, subd. (a) ["a support order may be modified or terminated at any time as the court determines to be necessary"].) White eventually

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when the wage bonus equals $200 per month. When the bonus is some other amount, the percentages are different. The parties' stipulation at trial did not mention this table.

sought a modification, but not until August 2012, and only then with respect to prospective child custody and support orders.

3. Eichenlaub's Attorney's Intent is Irrelevant

It is irrelevant that when Eichenlaub's attorney drafted the stipulated judgment he had already run a DissoMaster program and based the stipulation on the results generated by the program. We discern the parties' intent from the stipulation's terms, not from one party's (or attorney's) unilateral, unexpressed intent or some consonance between the stipulation and a support order approved in another case or specific family law practices. (See *In re Marriage of Simundza* (2004) 121 Cal.App.4th 1513, 1518.)

4. White's Interpretation is Inapposite

And even if none of this was true—if White and Eichenlaub had known about the bonus table and its definitions or if Eichenlaub's attorney's understanding of the meaning of the phrase "additional support" could be imputed not only to his own client but also to her soon-to-be-ex-husband—the meaning of that phrase as found in the bonus table would still be irrelevant because it applied only in a situation that assumed a base wage existed in the amount of $14,583 per month.

But if no such wage existed, nothing in the record suggests the *Smith-Ostler* percentages would have been the same for amounts over $14,583. The difference between a DissoMaster percentage (here approximately 41 percent of White's base wage) and a *Smith-Ostler* percentage (here 34.5 percent) reflects (1) that base wages are relatively certain and bonuses and commissions contingent; (2) that adequate support may be obtained based only on a base wage; and (3) that a support enhancement is fair when the base wage is exceeded. But if *all* of White's wages stemmed from bonuses and commissions, nothing in the record suggests the *Smith-Ostler* percentages would have been the same as were calculated here. More likely, Eichenlaub's attorney would have done a historical study to determine some likely foundational amount (after all, White's professed reason for moving to a position that paid commissions was that he thought his income would increase), run a DissoMaster calculation on that amount, and then applied

the DissoMaster percentage to it and a lesser *Smith-Ostler* percentages to unanticipated greater amounts. So even if we accept that "additional" support means a percentage of a "wage bonus," and accept that "wage bonus" means anything over a base wage, we still would not conclude that Eichenlaub's attorney wanted these meanings to be incorporated into this stipulated judgment because do so would be to reduce the income to which his client would otherwise receive in the event White received only commissions.

Therefore, in no event could White's interpretation of the phrase "additional support" apply here. The phrase is unambiguous.

For these reasons, I concur in part and dissent in part.

CHANEY, J.